Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket No. 01-317
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

COMMENTS OF NATIONAL ORGANIZATION FOR WOMEN

The National Organization for Women ("NOW") respectfully submits comments in response to the *Notice of Proposed Rulemaking* ("*2002 Biennial Review*") of the Federal Communications Commission ("Commission") in the above-referenced proceeding concerning broadcast ownership rules. NOW, an organization dedicated to making legal, political, social, and economic change to ensure fairness, justice, and equality for women, urges the Commission to promote ownership opportunities for women, minorities and small businesses by maintaining or expanding existing media ownership limits.

I. THE COMMISSION SHOULD PROMOTE OWNERSHIP OPPORTUNITIES FOR WOMEN, MINORITIES AND SMALL BUSINESSES BY MAINTAINING OWNERSHIP LIMITS

In the *2002 Biennial Review*, the Commission invited comment on "whether [it] should consider…diverse ownership as a goal in this proceeding" and, if so, "how to accommodate or seek to foster that goal." [1] NOW believes that promoting ownership opportunities for minorities, women, and small businesses is an important policy goal that should be an explicit objective of this proceeding.[2] The promotion of ownership opportunities for women, minorities, and other small businesses also advances the goals of diversity, competition, and localism.

A. Minority and Women Continue to Own Only a Small Fraction of Radio and Television Stations

The Commission has repeatedly recognized the dearth of women and minority broadcast station owners and has, over the years, adopted or proposed various policies to increase ownership opportunities for these groups.[3] In fact, in 1998 the Commission amended its Form 323 Ownership Report to collect information on the race and gender of station owners so that it could accurately assess the current state of minority and female ownership and determine the need for additional measures.[4] But, while the Commission has collected this data, it has not yet compiled the results in any meaningful manner for release to the public.[5]

The data that is available depicts low numbers of female and minority owned broadcast stations. The most recent study of minority ownership by the National Telecommunications and Information Administration ("NTIA") shows that even though minorities comprise approximately 29 percent of the U.S. population, they own less than 4 percent of all broadcast

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[1] 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Notice of Proposed Rulemaking*, MM Dkt. No. 02-277 ¶ 50 (Sept. 23, 2002) ("*2002 Biennial Review*").

[2] As discussed *infra* in Part II, promoting opportunities for minorities, women and small businesses is statutorily mandated.

[3] *See, e.g.* Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, *Notice of Proposed Rulemaking*, MM Dkt. No. 94-149; 91-140, 10 FCC Rcd 2788 (1995); KPMG LLP, *History of Broadcast License Application Process* (Nov. 2000).

[4] 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, *Report and Order*, MM Dkt. No, 98-43; 94-149, 13 FCC Rcd 23056, 23095 (1998).

[5] NOW has requested that the Commission compile this data, but has not yet received a response. *See Letter to Federal Communications Commission*, MM Dkt. No. 02-277, dated Oct. 30, 2002, filed on behalf of NOW.

stations.[6] Of the 10,577 commercial AM and FM radio stations licensed in 2000, only 4 percent were minority owned.[7] Of the 1,288 full-power commercial television stations, only 1.9 percent were minority owned, which represents the *lowest level* of minority television ownership since NTIA began collecting data in 1990.[8]

NOW is unaware of any recent study detailing the percentage of female station owners. The latest available data from 1987 indicates that women owned only 1.9 percent of television stations and 3 percent of radio stations.[9] Recent studies on the role of women in broadcasting show that women continue to be underrepresented in station management as well. A report by the Annenberg Public Policy Center ("Annenberg") found that among the presidents and chief executive officers of over 120 broadcast television and cable networks, only 16 percent were women.[10] Similarly, women make up only 16 percent of general managers at television stations.[11] In a press release accompanying the report, former FCC Commissioner Susan Ness remarked that, "[w]ith few exceptions, we have not moved beyond tokenism in the number of women in top leadership positions or serving on the boards of communications companies."[12] A report issued by Most Influential Women In Radio ("MIW") similarly shows that opportunities

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[6] U.S. Dep't of Commerce, National Telecommunications and Information Administration Minority Telecommunications Program, *Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States* at 25 ("*NTIA*") (2000); *see also* U.S. Census Bureau, *Population Estimates by Sex, Race and Hispanic Origin*, *available at* http://eire.census.gov/popest/archives/national (updated May 26, 2000).

[7] *NTIA* at 28 (indicating that there has been a slight increase in *radio* station ownership since 1998, but approximately half of the increase can be attributed to NTIA's improved search methodology which enabled it to identify more minority-owned stations).

[8] *Id.* at 34.

[9] *See* Cynthia E. Griffin, *A Few Good Women…are needed to fill a communications industry void*, Entrepreneur Magazine, *available at* http://www.entrepreneur.com (Oct. 2000).

[10] *See* Annenberg Public Policy Center, *The Glass Ceiling in the Executive Suite: The 2nd Annual Analysis of Women Leaders in Communication Companies* at 4 (2002), *available at* http://www.appcpenn.org ("*Annenberg Report*").

[11] *Id.* at 24.

[12] *See* Press Release, Annenberg Public Policy Center, Women Fail to Crack the Glass Ceiling in Communication Companies (Aug. 27, 2002) *available at* http://www.appcpenn.org; Former Commissioner Susan Ness Remarks (fewer than one in five board members of the largest communication companies are women).

for women in radio are "still far below the management opportunities for men."[13] In fact, MIW found that the percentage of stations with female general sales managers decreased this past year while the percentage of female general managers remained stagnant.[14] This lack of women in management positions suggests that women's ownership of broadcast stations remains extremely low.

B. Ownership Limits Help Prevent Exacerbation of the Problems Facing Women and Minority Owners

Not only has minority and female ownership historically been low, but industry consolidation, as demonstrated by deregulation in the radio industry, has also impeded minorities and women's abilities to obtain and retain broadcast stations. In 1996, the Commission completely eliminated national radio ownership limits as well as relaxed restrictions on the number of radio stations a single entity could own in the same market.[15] As documented in the Media Bureau Staff Research Paper, the number of radio owners has declined by 34 percent in the last six years.[16] On a per market basis, the average number of owners in metro markets fell from 13.5 in 1996 to 9.9 in 2002.[17] And, as the number of owners has decreased, the holdings of the remaining owners have increased. As of March 2002, the largest owner (Clear Channel) held 1156 stations and the second largest (Cumulus) owned 251 stations, whereas the largest group

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[13] Press Release, Most Influential Women in Radio, Annual Gender Analysis Released by MIW's (Aug. 7, 2002), *available at* http://www.radiomiw.com/pr_cfml/pr_020808.cfm (analyzing M Street Trend Report on the status of women managers in the radio industry).
[14] *Id.*
[15] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (directing the Commission to eliminate all restrictions on the number of television stations that a person or entity could "directly or indirectly own, operate, or control, or have a cognizable interest in nationwide"); *see generally* Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996, *Order*, MM Dkt. No. 96-90, 11 FCC Rcd 12368 (1996).
[16] George Williams and Scott Roberts, *Radio Industry Review 2002: Trends in Ownership, Format, and Finance* at 3-4 (Sept. 2002) ("*Radio Study*"); *see also* U.S. Dep't of Commerce, National Telecommunications and Information Administration Minority Telecommunications Program, *Minority Commercial Broadcast Ownership in the United States* 2 (1997) (finding several large radio group owners have "significant control" over the local media marketplace) ("*NTIA 1997 Report*").
[17] *Radio Study* at 7.

owners in 1996 held only 65.[18] In terms of revenues, the largest owner in each radio metro market captured an average 47 percent of the radio advertising revenue, while the two largest accounted for 74 percent.[19]

Studies have repeatedly shown that the greatest impediment to minority and female ownership has been obtaining access to capital.[20] In 1982, an Advisory Committee established by the Commission to facilitate minority ownership found that "financing has remained the single greatest obstacle to ownership."[21] Over a decade later, in 1995, the Commission similarly found that access to capital has "consistently been identified as a crucial barrier to entry."[22] And again in 1997, the Commission found that "the predominant impediment to entry…is access to and cost of capital."[23] The Study conducted by the Ivy Group for the FCC's Office of General Counsel, released in December 2000, extensively documented the problems faced by minorities and women in obtaining access to capital.[24]

The difficulties that minority and women-owned businesses have historically had in obtaining capital have been exacerbated by rising station prices, largely caused by industry consolidation. While radio stations used to sell for between seven and twelve times projected

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[18] *Id*. at Executive Summary and 4.
[19] *Id.* at Executive Summary.
[20] *See NTIA* at 45 (citing numerous studies and reports including: U.S. Dep't of Commerce, National Telecommunications and Information Administration Minority Telecommunications Program, *Capital Formation and Investment in Minority Business Enterprises in the Telecommunications Industries* at 2 (1995); Glenn Yago and Aaron Pankratz, *The Minority Business Challenge: Democratizing Capital for Emerging Domestic Markets*, Milken Institute and Minority Business Development Agency, U.S. Dept. of Commerce at 15 (Sept. 25, 2000)).
[21] *See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, MM Dkt. No. 82-797, 92 FCC Rcd 849, 852-53 (1982).
[22] Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Notice of Proposed Rulemaking*, MM Dkt. No. 94-149; 91-140, 10 FCC Rcd 2788, 2790 (1995).
[23] *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses,* MM Dkt. 96-113, 12 FCC Rcd 16802, 16920 (1997) ("FCC 1997 Report"). The inability of minorities and women to access sufficient capital can be attributed to difficulties in obtaining lines of credit and time-delayed payment options.
[24] Ivy Planning Group LLC, *Historical Study of Market Entry Barriers, Discrimination and Changes in Broadcast and Wireless Licensing 1950 to Present* at 17-52 (Dec. 2000)("Ivy Group Study").

cash flow, they now sell for between 20 and 22 times projected cash flow.[25] In fact, radio station prices have increased from the hundreds of thousand-dollar price range to the multi-million dollar price range.[26] The Ivy Group Study found that large group owners have two advantages over their smaller counterparts: (1) they have stations to trade with each other if they need to divest in certain markets; and, (2) they often use stock to buy and sell stations as well as whole groups.[27] These advantages enable large broadcasters to benefit from more favorable tax treatment than their smaller, non-public counterparts who must engage in cash transactions.[28]

The Ivy Group Study also found that station consolidation has "consolidated advertising revenues in the hands of the large broadcast group owners, significantly limiting the ability of small broadcasters to earn the money necessary to successfully compete and survive in the business."[29] Minorities and women tend to operate smaller stand-alone and AM stations that lack the audience reach that larger consolidated and FM stations enjoy.[30] As a result, many advertisers are less willing to place ads with minorities and women or, alternatively, offer less than the standard price.[31] Rating services, such as Arbitron, often employ sampling practices and geographic market definitions that favor large broadcast group owners in their bid to attract advertising revenue.[32] For example, at Clear Channel's request, Arbitron agreed to rate Clear Channel's Florida stations as a single group, thereby giving Clear Channel the appearance of having a larger listening audience and enabling it to command higher advertising prices than

[25] *Id.* at 14, 39.
[26] *See e.g., Ivy Group Study* at 14, 38-39*;* Frank Montero, former Director of the FCC's Office of Communications Business Opportunities said, "[P]rices for stations and the like have gotten so high that while there is still difficulty in getting access to capital…the brass ring is pulling farther and farther away from them because the prices are going up faster than the supplements to capital are appearing." *Id.* at 39.
[27] *Ivy Group Study* at 40-41.
[28] *Ivy Group Study* at 41.
[29] *Ivy Group Study* at 14. *See NTIA* at 40-41, 44*; NTIA 1997 Report* at 2.
[30] *NTIA* at 29 (indicating a decline in AM listenership over the last 15 years).
[31] *See Ivy Group Study* at 77.
[32] *See Ivy Group Study* at 64.

smaller, stand-alone stations.[33] Furthermore, smaller stations lack the ability to offer advertisers the attractive package deals offered by larger broadcast group owners.[34] Clear Channel, for example, offers cross-promotion to its advertisers over many different media, including radio, billboards, and concert venues, and across many different geographic areas.[35]

"Minority discounts," paying minority-formatted stations less than comparable general market stations, and advertiser bans on ethnical/racial formats further hinder the ability of minority-owned stations to obtain competitive advertising revenues.[36] Despite a call to amend these practices, which were highlighted in a FCC-commissioned study in early 1999, NTIA's 2000 report indicated that minorities still faced similar barriers.[37]

The difficulties that minorities and women have historically faced in obtaining the financing and revenues needed to own and maintain broadcast stations have been compounded by rule changes permitting increased industry consolidation. Any further relaxation or elimination of ownership limits, such as the television duopoly rule or the national television audience reach limit, will only concentrate ownership further in the hands of large group owners and decrease the paltry number of stations owned by minorities and women today.

II. CONGRESS HAS BOTH AUTHORIZED AND MANDATED THE COMMISSION TO PROMOTE OWNERSHIP OPPORTUNITIES FOR WOMEN, MINORITIES, AND SMALL BUSINESSES

The Commission has ample statutory authority promote opportunities for minority and female ownership of broadcast stations. In fact, section 257 of the Communications Act, as amended, obligates the Commission to identify and eliminate "market entry barriers for

[33] Lynnley Browning, *Making Waves on Air: Big Radio's Bad Boy*, NY TIMES, Jun. 19, 2002, at C1.
[34] *See Ivy Group Study* at 77.
[35] Browning, Lynnley, *Making Waves on Air: Big Radio's Bad Boy*, NY TIMES, Jun. 19, 2002, at C1.
[36] Kofi Ofori, Civil Rights Forum on Communications Policy, *When Being No. 1 Is Not Enough*: *The Impact of Advertising Practices on Minority-Owned and Minority-Formatted Broadcast Stations*, at Synopsis and 94 (1999) (Study commissioned and released by FCC).
[37] *NTIA* at 44.

entrepreneurs and other small businesses" in the ownership of telecommunications services.[38] In fulfilling this mandate, the Commission must "promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity."[39] In enacting section 257, members of Congress expressed concern over the under-representation of minority and female-owned small businesses in the telecommunications market and its intent to increase competition by diversifying ownership.[40] Representative Collins commented that, "[m]inority and women-owned small business continue to be extremely under represented in the telecommunications field…Underlying [section 257] is the obvious fact that diversity of ownership remains a key to the competitiveness of the U.S. telecommunications marketplace."[41] As discussed above, ownership limits help promote diversity of ownership by preventing increased barriers to entry caused by consolidation.

Promotion of ownership opportunities by maintaining ownership limits also furthers the Congressional purpose underlying section 309(j) of the Communications Act, which directs the Commission to award mutually exclusive applications for commercial broadcast licenses by competitive bidding.[42] In implementing auctions, the Commission must "ensure that small businesses … and businesses owned by member of minority groups and women are given the opportunity to participate in the provision of spectrum based services."[43] Ownership limits are a race-neutral way of promoting opportunities for women and minority business owners in

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[38] 47 U.S.C. § 257 (a).
[39] 47 U.S.C. § 257 (b).
[40] *See* 142 Cong. Rec. H 1141, 1176-77 (Feb. 1, 1996) (statement of Rep. Collins).
[41] *Id.* at 1176-77.
[42] 47 U.S.C. § 309(j).
[43] 47 U.S.C. § 309(j)(4)(D). *See also id*. at § 309(j)(4)(C).

accordance with this statutory mandate, and do not invoke any heightened standard of scrutiny under judicial precedent.[44]

CONCLUSION

Promoting ownership opportunities for women, minorities, and small businesses is a congressionally mandated goal that should be an explicit objective in this proceeding. At present, very few radio and television stations are owned by either minorities or women. Increased industry consolidation impedes the ability of minorities, women, and small businesses to enter the broadcasting industry, or if they already are in the industry, to compete against large group owners. Thus, the Commission should retain or strengthen existing media ownership limits to promote and preserve opportunities for minority and female ownership of broadcast stations.

Respectfully submitted,

Of Counsel:

Connie Milonakis
Law Student
Georgetown University Law Center

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Counsel for NOW
Amy Wolverton, Esq.
Angela J. Campbell, Esq.
Citizens Communications Center Project
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
(202) 662-9535

[44] *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) (*race-based* measures subject to strict scrutiny).